

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**PACSEC3, LLC,  
Plaintiff,**

**v.**

**AXWAY, INC.,  
Defendant**

**Civil Action No. 1:24-cv-04711-MLB**

**JURY TRIAL DEMANDED**

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**PLAINTIFF’S RESPONSE TO MOTION TO DISMISS**

PacSec3, LLC hereby responds to Defendant’s Motion to Dismiss (Dkt. No. 19) filed March 24, 2025.

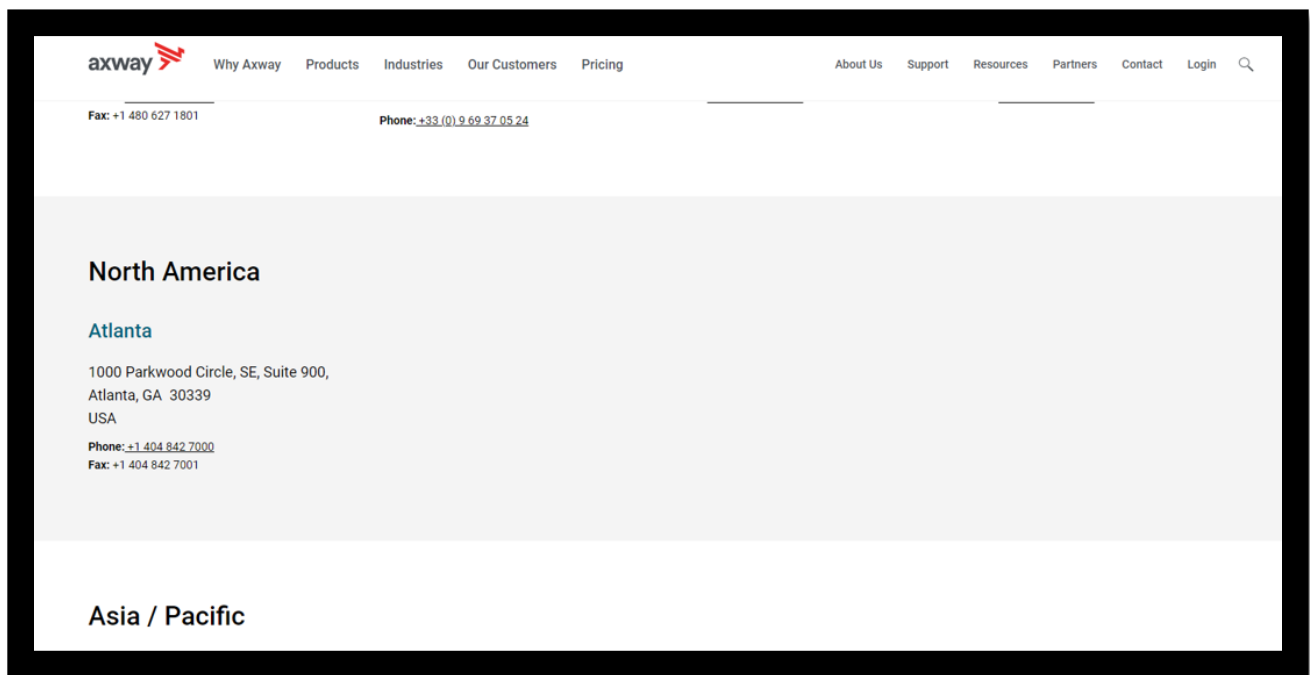
**I. INTRODUCTION**

The Northern District of Georgia is a proper venue for this action. Under § 1400(b), a patent infringement action may only be brought in the district where the defendant has committed acts of infringement and has a regular and established place of business.

On the day the original complaint was filed, October 16, 2024, Axway had a regular and established place of business in the Northern District of Georgia or recently had had a regular and established place of business in the Northern District of Georgia. Accordingly, the Court should not dismiss the instant cause.

## II. FACTUAL BACKGROUND

On October 16, 2024, the Defendant held itself out as having a regular and established business in the Northern District of Georgia, at 1000 Parkwood Circle, SE, Suite 900, Atlanta, GA 3039, as shown below:



The Defendant argues that the business at 1000 Parkwood Circle, SE, Suite 900, Atlanta, GA 30339 was closed in September 2024 (see Dkt. No. 19, pp. 4-5).

## III. LEGAL STANDARD

Under the patent venue statute (§ 1400(b)), venue is properly lodged in the district where infringement is alleged to have occurred if the defendant had a regular and established place of business at the time the cause of action accrued and suit is filed

within a reasonable time thereafter. See, e.g., *Raytheon Company v. Cray, Inc.*, 258 F.Supp.3d 781, 787 (2017)(vacated on other grounds by IN RE: CRAY INC, 871 F.3d 1355, Fed.Cir.(Tex.), Sep. 21, 2017.). See also, *Welch Sci. Co. v. Human Eng'g Inst., Inc.*, 416 F.2d 32, 35 (7th Cir. 1969), cert. denied, 396 U.S. 1003, 90 S.Ct. 552, 24 L.Ed.2d 494 (1970); *San Shoe Trading Corp. v. Converse Inc.*, 649 F.Supp. 341, 345 (S.D.N.Y. 1986); *Datascope Corp. v. SMEC, Inc.*, 561 F.Supp. 787, 789 (D.N.J. 1983), aff'd in relevant part, 776 F.2d 320 (Fed. Cir. 1985).

#### **IV. THIS CASE SHOULD NOT BE DISMISSED BECAUSE VENUE IS PROPER IN THE NORTHERN DISTRICT OF GEORGIA**

As of October 16, 2024, Defendant was holding itself out as having a regular and established business in the Northern District of Georgia, at 1000 Parkwood Circle, SE, Suite 900, Atlanta, GA 30339. Thus, there is evidence that Defendant did have such regular and established business in the Northern District of Georgia when this case was initiated. On the other hand, if Defendant's position that the business in question was closed in September 2024 is correct, Plaintiff's action was nevertheless filed the following month, on October 16, 2024. By any reasonable standard, Plaintiff's suit was filed within a reasonable time after the alleged September closure.

Either way, PacSec3 has established venue in the Northern District of Georgia, so the case should not be dismissed.

## V. CONCLUSION

Venue is proper in this District. Therefore, Axway respectfully asks the Court to deny Defendant's motion.

Respectfully submitted this 15<sup>th</sup> day of April 2025,

**THE DUCOS LAW FIRM, LLC**  
Alexander Shunnarah Trial Attorneys,  
of Counsel

/s/ Kristina Ducos  
Kristina Ducos  
Georgia State Bar No. 440149  
600 Peachtree Street NE, Suite 3710  
Atlanta, Georgia 30308  
(404) 469-9574 (telephone)  
(470) 220-5130 (fax)

**Ramey LLP**

/s/ William P. Ramey, III  
William P. Ramey, III (admitted *pro hac vice*)  
Texas State Bar No. 24027643  
5020 Montrose Blvd., Suite 800  
Houston, Texas 77006  
(713) 426-3923 (telephone)  
(832) 900-4941 (fax)  
wramey@rameyfirm.com

***Attorneys for PACSEC3, LLC***

**CERTIFICATE OF SERVICE**

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that all counsel of record who have appeared in this case are being served on this day of April 15, 2025, with a copy of the foregoing and ECF filing.

/s/ Kristina Ducos  
Kristina Ducos